

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOHNATHAN KANFER, on behalf of
himself, all others similarly situated, and
the general public,

Plaintiff,

v.

PHARMACARE US, INC.,

Defendant.

Case No. 15-cv-120 H (JLB)

**ORDER GRANTING JOINT MOTION
AND ENTERING STIPULATED
PROTECTIVE ORDER**

[ECF No. 53]

The parties' Joint Motion for Entry of Stipulated Protective Order is **GRANTED**. (ECF No. 53.) The Court recognizes that at least some of the documents and information ("materials") being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order in this action ("Order").

The materials to be exchanged by the parties throughout the course of the litigation may contain trade secret or other confidential research, technical, cost, price, marketing or other commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(1)(G). The purpose of this Order is therefore to protect the confidentiality of such materials as much as practical during the litigation.

1 THEREFORE:

2 DEFINITIONS

3 1. The term “Confidential Information” means and includes information
4 contained or disclosed in any material, including documents, portions of documents,
5 answers to interrogatories, responses to request for admission, trial testimony, deposition
6 testimony, and transcripts of trial testimony and depositions, including data, summaries, and
7 compilations derived therefrom that is deemed to be Confidential Information by any party
8 to which it belongs.

9 2. The term “materials” will include, but is not limited to: documents;
10 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other
11 materials that identify customers or potential customers; price lists or schedules or other
12 matter identifying pricing; minutes; telegrams; letters; statements; cancelled checks;
13 contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk
14 diaries; appointment books; expense accounts; recordings; photographs; motion pictures;
15 compilations from which information can be obtained and translated into reasonably usable
16 form through detection devices; sketches; drawings; notes (including laboratory notebooks
17 and records); reports; instructions; disclosures; other writings; models and prototypes and
18 other physical objects.

19 3. The term “counsel” will mean counsel of record, and other attorneys,
20 paralegals, secretaries, and other support staff employed in the law firms identified below:
21 The Weston Firm, The Law Offices of Ronald A. Marron, APLC, and Seyfarth Shaw LLP.

22 GENERAL RULES

23 4. Each party to this litigation that produces or discloses any materials, answers
24 to interrogatories, responses to requests for admission, trial testimony, deposition testimony,
25 and transcripts of trial testimony and depositions, or information that the producing party
26 believes should be subject to this Protective Order may designate the same as
27 “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY.”

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1 a) Designation as “CONFIDENTIAL”: Any party may designate information as
2 “CONFIDENTIAL” only if, in the good faith belief of such party and its
3 counsel, the unrestricted disclosure of such information could be potentially
4 prejudicial to the business or operations of such party.

5 b) Designation as “CONFIDENTIAL - FOR COUNSEL ONLY”: Any party may
6 designate information as “CONFIDENTIAL - FOR COUNSEL ONLY” only
7 if, in the good faith belief of such party and its counsel, the information is
8 among that considered to be most sensitive by the party, including but not
9 limited to trade secret or other confidential research, development, financial or
10 other commercial information.

11 5. In the event the producing party elects to produce materials for inspection, no
12 marking need be made by the producing party in advance of the initial inspection. For
13 purposes of the initial inspection, all materials produced will be considered as
14 “CONFIDENTIAL - FOR COUNSEL ONLY,” and must be treated as such pursuant to the
15 terms of this Order. Thereafter, upon selection of specified materials for copying by the
16 inspecting party, the producing party must, within a reasonable time prior to producing those
17 materials to the inspecting party, mark the copies of those materials that contain
18 Confidential Information with the appropriate confidentiality marking.

19 6. Whenever a deposition taken on behalf of any party involves a disclosure of
20 Confidential Information of any party:

21 a) the deposition or portions of the deposition must be designated as containing
22 Confidential Information subject to the provisions of this Order; such
23 designation must be made on the record whenever possible, but a party may
24 designate portions of depositions as containing Confidential Information after
25 transcription of the proceedings; [A] party will have until fourteen (14) days
26 after receipt of the deposition transcript to inform the other party or parties to
27 the action of the portions of the transcript to be designated “CONFIDENTIAL”
28 or “CONFIDENTIAL - FOR COUNSEL ONLY.”

b) the disclosing party will have the right to exclude from attendance at the deposition, during such time as the Confidential Information is to be disclosed, any person other than the deponent, counsel (including their staff and associates), the court reporter, and the person(s) agreed upon pursuant to paragraph 8 below; and

c) the originals of the deposition transcripts and all copies of the deposition must bear the legend “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY,” as appropriate, and the original or any copy ultimately presented to a court for filing must not be filed unless it can be accomplished under seal, identified as being subject to this Order, and protected from being opened except by order of this Court.

7. All Confidential Information designated as “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY” must not be disclosed by the receiving party to anyone other than those persons designated within this order and must be handled in the manner set forth below and, in any event, must not be used for any purpose other than in connection with this litigation, unless and until such designation is removed either by agreement of the parties, or by order of the Court.

8. Information designated “CONFIDENTIAL - FOR COUNSEL ONLY” must be viewed only by counsel (as defined in paragraph 3) of the receiving party, and by independent experts under the conditions set forth in this Paragraph. The right of any independent expert to receive any Confidential Information will be subject to the advance approval of such expert by the producing party or by permission of the Court. The party seeking approval of an independent expert must provide the producing party with the name and curriculum vitae of the proposed independent expert, and an executed copy of the form attached hereto as Exhibit A, in advance of providing any Confidential Information of the producing party to the expert. Any objection by the producing party to an independent expert receiving Confidential Information must be made in writing within fourteen (14) days following receipt of the identification of the proposed expert. Confidential Information

1 may be disclosed to an independent expert if the fourteen (14) day period has passed and
2 no objection has been made. The approval of independent experts must not be unreasonably
3 withheld.

4 9. Information designated “CONFIDENTIAL” may be viewed only by counsel
5 (as defined in paragraph 3) of the receiving party, by independent experts (pursuant to the
6 terms of paragraph 8), and by the additional individuals listed below, provided each such
7 individual has read this Order in advance of disclosure and has agreed in writing to be bound
8 by its terms:

- 9 a) Executives who are required to participate in policy decisions with reference
10 to this action;
11 b) Technical personnel of the parties with whom Counsel for the parties find it
12 necessary to consult, in the discretion of such counsel, in preparation for trial
13 of this action; and
14 c) Stenographic and clerical employees associated with the individuals identified
15 above.

16 10. With respect to material designated “CONFIDENTIAL” or
17 “CONFIDENTIAL - FOR COUNSEL ONLY,” any person indicated on the face of the
18 document to be its originator, author or a recipient of a copy of the document, may be shown
19 the same.

20 11. All information which has been designated as “CONFIDENTIAL” or
21 “CONFIDENTIAL - FOR COUNSEL ONLY” by the producing or disclosing party, and
22 any and all reproductions of that information, must be retained in the custody of the counsel
23 for the receiving party identified in paragraph 3, except that independent experts authorized
24 to view such information under the terms of this Order may retain custody of copies such
25 as are necessary for their participation in this litigation.

26 12. Before any materials produced in discovery, answers to interrogatories,
27 responses to requests for admissions, deposition transcripts, or other documents which are
28 designated as Confidential Information are filed with the Court for any purpose, the party

1 seeking to file such material must seek permission of the Court to file the material under
2 seal.

3 13. No document shall be filed under seal unless counsel secures a court order
4 allowing the filing of a document under seal. An application to file a document under seal
5 shall be served on opposing counsel, and on the person or entity that has custody and control
6 of the document, if different from opposing counsel. If the application to file under seal a
7 document designated as confidential is being made by the non-designating party, then upon
8 request, the designating party must promptly provide the applicant with a legal basis for the
9 confidential designation to include with the application. If opposing counsel, or the person
10 or entity that has custody and control of the document, wishes to oppose the application,
11 he/she must contact the chambers of the judge who will rule on the application, to notify
12 the judge's staff that an opposition to the application will be filed.

13 14. At any stage of these proceedings, any party may object to a designation of the
14 materials as Confidential Information. The party objecting to confidentiality must notify, in
15 writing, counsel for the designating party of the objected-to materials and the grounds for
16 the objection. If the dispute is not resolved consensually between the parties within seven
17 (7) days of receipt of such a notice of objections, the objecting party may move the Court
18 for a ruling on the objection. The materials at issue must be treated as Confidential
19 Information, as designated by the designating party, until the Court has ruled on the
20 objection or the matter has been otherwise resolved.

21 15. All Confidential Information must be held in confidence by those inspecting
22 or receiving it, and must be used only for purposes of this action. Counsel for each party,
23 and each person receiving Confidential Information must take reasonable precautions to
24 prevent the unauthorized or inadvertent disclosure of such information. If Confidential
25 Information is disclosed to any person other than a person authorized by this Order, the
26 party responsible for the unauthorized disclosure must immediately bring all pertinent facts
27 relating to the unauthorized disclosure to the attention of the other parties and, without
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1 prejudice to any rights and remedies of the other parties, make every effort to prevent further
2 disclosure by the party and by the person(s) receiving the unauthorized disclosure.

3 16. No party will be responsible to another party for disclosure of Confidential
4 Information under this Order if the information in question is not labeled or otherwise
5 identified as such in accordance with this Order

6 17. If a party, through inadvertence, produces any Confidential Information
7 without labeling or marking or otherwise designating it as such in accordance with this
8 Order, the designating party may give written notice to the receiving party that the document
9 or thing produced is deemed Confidential Information, and that the document or thing
10 produced should be treated as such in accordance with that designation under this Order.
11 The receiving party must treat the materials as confidential, once the designating party so
12 notifies the receiving party. If the receiving party has disclosed the materials before
13 receiving the designation, the receiving party must notify the designating party in writing
14 of each such disclosure. Counsel for the parties will agree on a mutually acceptable manner
15 of labeling or marking the inadvertently produced materials as "CONFIDENTIAL" or
16 "CONFIDENTIAL - FOR COUNSEL ONLY" -SUBJECT TO PROTECTIVE ORDER.

17 18. Nothing within this order will prejudice the right of any party to object to the
18 production of any discovery material on the grounds that the material is protected as
19 privileged or as attorney work product.

20 19. Nothing in this Order will bar counsel from rendering advice to their clients
21 with respect to this litigation and, in the course thereof, relying upon any information
22 designated as Confidential Information, provided that the contents of the information must
23 not be disclosed.

24 20. This Order will be without prejudice to the right of any party to oppose
25 production of any information for lack of relevance or any other ground other than the mere
26 presence of Confidential Information. The existence of this Order must not be used by either
27 party as a basis for discovery that is otherwise improper under the Federal Rules of Civil
28 Procedure.

1 21. Nothing within this order will be construed to prevent disclosure of
2 Confidential Information if such disclosure is required by law or by order of the Court.

3 22. Upon final termination of this action, including any and all appeals, counsel
4 for each party must, upon request of the producing party, return all Confidential Information
5 to the party that produced the information, including any copies, excerpts, and summaries
6 of that information, or must destroy same at the option of the receiving party, and must
7 purge all such information from all machine-readable media on which it resides within 14
8 days of receiving a request from the producing party. Notwithstanding the foregoing,
9 counsel for each party may retain all pleadings, briefs, memoranda, motions, and other
10 documents filed with the Court that refer to or incorporate Confidential Information, and
11 will continue to be bound by this Order with respect to all such retained information.
12 Further, attorney work product materials that contain Confidential Information need not be
13 destroyed, but, if they are not destroyed, the person in possession of the attorney work
14 product will continue to be bound by this Order with respect to all such retained information.

15 23. Action by this Court regarding the return or destruction of all
16 “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY” materials must be
17 preceded by an *ex parte* motion for an order authorizing the return of all
18 “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY” materials to the
19 party that produced the information or the destruction thereof.

20 24. The restrictions and obligations set forth within this order will not apply to any
21 information that: (a) the parties agree should not be designated Confidential Information;
22 (b) the parties agree, or the Court rules, is already public knowledge; (c) the parties agree,
23 or the Court rules, has become public knowledge other than as a result of disclosure by the
24 receiving party, its employees, or its agents in violation of this Order; or (d) has come or
25 will come into the receiving party’s legitimate knowledge independently of the production
26 by the designating party. Prior knowledge must be established by pre-production
27 documentation.

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25. The restrictions and obligations within this order will not be deemed to prohibit discussions of any Confidential Information with anyone if that person already has or obtains legitimate possession of that information.

26. Transmission by email is acceptable for all notification purposes within this order.

27. This Order may be modified by agreement of the parties, subject to approval by the Court.

28. Without separate court order, this Protective Order and the parties stipulation does not change, amend, or circumvent any court rule or local rule.

29. The Court may modify the terms and conditions of this Order for good cause, or in the interest of justice, or on its own order at any time in these proceedings. The parties prefer that the Court provide them with notice of the Court's intent to modify the Order and the content of those modifications prior to the entry of such an order.

IT IS SO STIPULATED.

Dated: March 11, 2016

By: s/ David Elliot

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1 Dated: March 11, 2016

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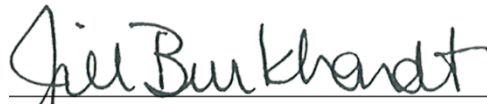
Facsimile: (415) 397-8549

Counsel for Defendant

10 * Counsel for Plaintiff, David Elliot, certifies that, pursuant to Section 2.f.4. of the Court's
11 CM/ECF Administrative Policies, Defendant's counsel, Patty Lee, has reviewed the
12 contents of this Joint Motion and authorized placement of her electronic signature on this
13 document.

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15 **IT IS SO ORDERED.**

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17 Dated: March 11, 2016

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19 Hon. Jill L. Burkhardt
20 United States Magistrate Judge
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JONATHAN KANFER, on behalf of himself,
all others similarly situated and the general
public,

Plaintiff,

v.

PHARMACARE US, INC., a Delaware
Corporation,

Defendant.

Case No: 3:15-cv-120 H (JLB)

Pleading Type: Class Action

**EXHIBIT A - AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

I, _____, declare and say that:

1. I am employed as _____ by _____.

2. I have read the Protective Order entered in *Jonathan Kanfer, v. Pharmicare US, Inc.*,
Case No. 3:15-cv-120 H (JLB), and have received a copy of the Protective Order.

3. I promise that I will use any and all “Confidential” or “Confidential - For Counsel Only”
information, as defined in the Protective Order, given to me only in a manner authorized by the
Protective Order, and only to assist counsel in the litigation of this matter.

4. I promise that I will not disclose or discuss such “Confidential” or “Confidential - For
Counsel Only” information with anyone other than the persons described in paragraphs 3, 8 and 9 of the
Protective Order.

5. I acknowledge that, by signing this agreement, I am subjecting myself to the jurisdiction
of the United States District Court for the Southern District of California with respect to enforcement of
the Protective Order.

6. I understand that any disclosure or use of “Confidential” or “Confidential - For Counsel
Only” information in any manner contrary to the provisions of the Protective Order may subject me to
sanctions for contempt of court.

I declare under penalty of perjury that the foregoing is true and correct.

Date: _____